

Claimant established, through her testimony, that prior to lifting a patient on April 18, 1995, she did have chest pains but such pains were caused by a preexisting stress

condition for which she took medication. Claimant testified that she was working for the respondent April 18, 1995, on the 11:00 p.m. to 7:00 a.m. shift, as a charge nurse. At approximately 11:45 p.m., on the date of the accident, claimant found one of the patients in distress on the bathroom floor of her room. Claimant testified that with the assistance of a nurse's aide, she lifted the patient from the floor and placed her in bed. At the time the claimant lifted the patient, she immediately felt a pull in her left shoulder. This resulted in a sharp pain in the shoulder area. She attempted to complete the shift but the pain intensified to the point that she had to leave the shift at approximately 5:30 a.m. She then sought treatment for her pain at a local hospital emergency room. Claimant was subsequently seen for a follow-up the next morning by a local physician for the injury. Claimant admitted that earlier in the shift, prior to the accident, she had experienced chest pains. However, she related these pains to a preexisting stress condition for which she took prescribed medication.

Claimant did not return to her employment with the respondent as she moved to Tahlequah, Oklahoma, in May of 1995 because her husband was transferred by his employer. Claimant testified that she did work in Tahlequah at the local hospital commencing in the late part of July 1995 or the first part of August 1995 for approximately a month and one-half. Her left arm and shoulder remained symptomatic at that time. When she went to work for the local hospital, she notified her supervisor that she could not lift with her left arm because of the injury she received while working for the respondent. She finally was unable to perform her job because of continuing symptoms due to her left shoulder and arm injury. Claimant testified that she had not suffered an intervening accident while working at the local hospital in Tahlequah.

At the time of the preliminary hearing, claimant was under the treatment of D. Randall Turner, D.O., in Tahlequah, Oklahoma. After an EMG revealed the presence of a C6 radiculopathy on the left, Dr. Turner diagnosed claimant as having a pinched nerve in her neck resulting in numbness and pain in her left arm. He further opined that this condition could have resulted from the injury that she received while working for the respondent on April 18, 1995.

Respondent presented the testimony of Patricia Wood, nurse's aide; Joyce Horton, registered nurse; and Karen Briggs, administrator. Patricia Wood testified that she was present and observed the claimant lifting the patient from the floor on April 18, 1995. Ms. Wood contends that claimant lifted with her right shoulder instead of her left shoulder, as testified by the claimant. Ms. Wood also testified that claimant complained of pain in her chest and her left arm prior to the lifting incident. Joyce Horton was the nurse that the claimant called to relieve her because she could not finish her work shift after the lifting incident. Ms. Horton testified that claimant did not notify her that she was leaving work because of a work-related injury. She complained of chest pains and left arm pain, but did not attribute the pains to an incident at work. However, Ms. Horton testified that the claimant returned to respondent's nursing home after treatment at the hospital and requested her to make out an Employee Incident Report which the claimant then signed. Karen Briggs testified that the respondent had a policy that an employee, when injured, had to fill out a report of accident right after the injury. Ms. Briggs testified that the claimant did not fill this out until the morning after her injury and she was not notified until that evening that the claimant was alleging a work-related injury.

All the witnesses that testified in this matter did so in person before the Administrative Law Judge. The question of whether claimant injured her left shoulder and arm when she lifted the patient on April 18, 1995 while working for the respondent turns primarily on the credibility of the witnesses. The Administrative Law Judge found claimant had presented evidence that proved that it was more probably true than not that she was injured at work. The Appeals Board finds that the Administrative Law Judge's conclusion

is supported by both claimant's testimony and the medical records introduced at the preliminary hearing.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes entered in this proceeding on February 19, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Timothy D. Clover, Chanute, KS
Leigh C. Hudson, Fort Scott, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director